

UNITED STATES BANKRUPTCY COURT
DISTRICT OF IDAHO

U.S. COURTS

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REC'D
CAMILLE S. BURKE
CLERK
IDAHO

In Re:

ASA WILLET "BILL" ROARK

Case No.

01-02073

Debtor(s)

CHAPTER 13 PLAN AND RELATED MOTIONS

This plan is proposed by the debtor. It contains provisions that may significantly affect your rights. It contains matters, which if not objected to, may be accepted by the court as true. Creditors cannot vote on this plan. A creditor who wishes to oppose the plan and related motions may do so by timely filing a written objection. Any objection must be in writing, and must be filed with the court and served upon the debtor, debtor's attorney, and the chapter 13 trustee by the time set by the court for the first meeting of creditors, within five (5) days thereafter, or as otherwise allowed by law. Absent any such objection, the court may confirm this plan, accept the valuations and allegations herein, and grant the motions without further notice or hearing. If a creditor files a timely written objection, that creditor must also appear at the hearing on confirmation of the plan to assert the objection, or it may be denied without further notice or hearing. The provisions of the confirmed plan will bind the debtor and each creditor.

1. **PAYMENTS TO TRUSTEE.** Such portion of the projected future earnings and income of the debtor as is necessary for the execution of the plan is submitted to the supervision and control of the chapter 13 trustee for the duration of this plan, to wit:

(a) **PERIODIC PAYMENTS.** The Debtor will pay to the Trustee for a term not exceeding 36 months the sum of \$95.00 monthly plus \$10.00 monthly for 36 months to a reserve for post confirmation attorneys fees as further defined below for a total payment to the Trustee of \$105.00 per month for 36 months. This will be a total sum of \$3,780.00 for the 36-month period. This amount will cover the priority claim for tax arrearage owed to the Internal Revenue Service in the amount of \$2006.64. The remaining attorney's fees of \$500.00 shall be paid by the Trustee to attorney J. Bart Green out of the plan payments during the first six months of the plan. The Trustee shall be paid a commission of 10 percent on all payments made

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through the plan, and any remaining funds will be paid to the benefit of the general unsecured creditors.

(b) **INCOME TAX REFUNDS.** (Check One)

☐ Debtor projects no income tax refunds during the term of this plan. As a result, no income tax refunds will be turned over to the trustee; OR

☒ Debtor projects income tax refunds during the term of this plan. During the initial 36 months of the plan, the debtor will turn over to the trustee all income tax refunds. At any time during the term of the plan, debtor shall be entitled to use a tax refund to pay taxes due any other taxing authority; however, the debtor shall remit any tax refund balance to the trustee. Upon the trustee's recommendation or upon notice and hearing, the Court may enter an order entitling the debtor to retain, in whole or in part, income tax refunds owing during the term of the plan to facilitate the terms of this plan or meet the other reasonable or necessary needs of the debtor.

(c) **EARLY PAYOFF.** This plan may not be paid in less than thirty-six (36) months by debtor without notice to interested parties and an opportunity for hearing before the Court.

(d) **WAGE DEDUCTION ORDER.** Debtor acknowledges that if the debtor is ever more than thirty (30) days delinquent on any payment due under section 1(a) of this plan, upon request of the trustee a wage deduction order to debtor's employer may immediately issue.

(e) **DEBTOR'S PROJECTED DISPOSABLE INCOME.** Pursuant to 11 USC § 1325 (b)(1)(B) all of the debtor's projected disposable income to be received in the three-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

2. **DEFERRAL OF PAYMENTS FOR CAUSE.** The trustee for cause may defer not more than two monthly payments per calendar year without further notice to parties or hearing before the Court.

3. **POST-CONFIRMATION RECOVERY OF PROPERTY.** Debtor elects as follows:

(Check One) ☒ The trustee shall retain the right, post-confirmation, to recover monies, to recover property and avoid liens pursuant to 11 USC §541, et. seq. Any such recovery or avoidance shall, when liquidated, be disbursed to creditors as additional disposable income, in accordance with 11 USC §1325(b); OR

- ☐ The debtor has calculated the right to recover monies, to recover property and avoid liens pursuant to 11 USC §541, et seq. in the plan payment. As a result, the trustee shall not retain such further rights, post-confirmation.

4. **DISBURSEMENTS & PLAN TREATMENT BY TRUSTEE**. From the payments so received, the trustee shall make disbursements as follows:

(a) **PROVISIONS FOR PRIORITY CREDITORS**. Full payment of allowed claims entitled to priority under 11 USC §507 in deferred cash payments as follows:

(1) **Trustee**. Fees to the trustee as provided by 28 USC §586.

(2) **Attorney**. Fees to the debtor's attorney in the total amount of \$1,000.00, of which \$500.00 has already been received, the remaining \$500.00 shall be paid in equal monthly installments over the initial six (6) months to J. Bart Green, 929 E. 1st Street, Meridian, Idaho 83642. The Trustee shall accumulate at the rate of \$10.00 per month for 36 months and hold in reserves \$360.00. Upon ex-parte application to the court for additional fees accompanied by the Attorney's Affidavit of fees and costs for Post Confirmation work, the Court, in its discretion, may award additional fees and costs up to the \$360.00 reserve. In the event fees and costs for post confirmation work exceed \$360.00, the attorney shall make application to the Court and notice to all creditors and interested parties of a hearing on the matter in open Court. Reserved funds shall be dispersed to unsecured creditors if an application is not made for said fees prior to 90 days before the last plan payment is made.

Maintenance/Child Support. Unless the holder of the claim agrees otherwise, upon confirmation of the plan and the filing of an allowed claim, any allowed unsecured claims of a spouse, former spouse, or child of debtor, for delinquent maintenance or child support shall be paid:

- (Check One) ☐ during the initial _____ months of the plan;
☐ in equal monthly installments over the term of the plan;
OR
☒ not applicable.

(4) **Taxes**. Unless the holder of the claim agrees otherwise, upon confirmation of the plan and the filing of an allowed claim, any allowed unsecured priority claims of governmental units shall be paid:

- (Check One) ☐ during the initial _____ months of the plan; OR
☒ in equal monthly installments over the term of the plan.

(b) **PROVISIONS FOR CREDITORS HOLDING SECURED CLAIMS**

filing of this bankruptcy by debtor. The periodic payments under this plan, shall be applied by creditor to the earliest payment for which a portion of the payment is due. Payments shall commence upon filing of an allowable claim and pursuant to the terms of the Order of Confirmation of the plan. Unless otherwise provided, the frequency of payments shall be in approximate equal monthly amounts, during the term of the plan. The *Total in Default* provided hereinafter represents the debtor's projection of the total amount necessary to cure the default. In the event that the creditor's allowed claim provides otherwise, the allowed claim shall control. Each such creditor shall further be entitled to receive interest on their claim, as allowed by law. Such interest rate shall be the non-default contract rate of interest provided in the promissory note between each creditor and debtors..

| CREDITOR | REGULAR PAYMENT | TOTAL IN DEFAULT |
|----------|-----------------|------------------|
| N/A | | |

(c) **PROVISIONS FOR UNSECURED CLAIMS**

(1) **Classification of Unsecured Claims.** Unless otherwise provided, the following unsecured claims will receive the indicated dollar amounts, in equal monthly installments during the term hereof, on their allowed claim. Payments shall commence upon confirmation of this plan and filing of an allowed claim.

| CREDITOR | AMOUNT TO BE PAID |
|---|-----------------------------|
| CLASS "A"—Co-signed obligations owing to: | N/A |
| | |
| CLASS "B"—Student loans owing to: | N/A |
| | |
| CLASS "C"—Other obligations owing to: | To Be Determined By Trustee |

(2) **General Unsecured Claims.** Upon confirmation, and at times consistent with the other provisions of this plan, the Trustee will, from funds available after payment of priority and secured claims, pay pro-rata dividends to all creditors who have filed timely allowed unsecured claims.

5. **DISBURSEMENTS & PLAN TREATMENT BY DEBTOR.** Debtor shall make disbursements directly to creditors and provides to treat claims as follows:

(a) **Long Term Secured Claims Not in Default and Not Included in this Plan.** To secured creditors to whom the last payments are due beyond the term of the plan, whose rights are *not* being modified pursuant to 11 USC §1322(b)(2) and are not otherwise impaired, the secured claim of each shall be paid directly by debtor according to the terms of the outstanding agreements with each creditor. Each of the following named secured creditors shall

retain their lien on the collateral securing the debt until their allowed claim is paid in full. The debtor will pay these creditors directly as follows:

| CREDITOR | COLLATERAL DESCRIPTION | ESTIMATED BALANCE OWING | PAYMENT OUTSIDE OF PLAN |
|------------------------|------------------------|-------------------------|-------------------------|
| Countrywide Home Loans | Primary Residence | \$88,548.58 | \$791.00 |

(b) **Surrender of Collateral.** The debtor will surrender debtor's interest in the following collateral securing each allowed secured claim filed by the following creditors. After surrender of the collateral such creditor's deficiency, if any, after liquidation of the collateral, will be paid as an unsecured claim under the provisions for general unsecured creditors if such creditor amends its secured claim to an unsecured claim for such deficiency. Upon the entrance of the order confirmation this plan, the automatic stay imposed by 11 USC §362(a) shall be terminated pursuant to 11 USC §362(d).

| CREDITOR | COLLATERAL TO BE SURRENDERED |
|---|--|
| Countrywide Home Loans/ Washington Mutual Bank, FA | Rental Home at 6742 Gary Lane, Boise, ID 83642 |
| St. Lukes - Medical Lien | Rental Home at 6742 Gary Lane, Boise, ID 83642 |
| Countrywide Home Loans | Undeveloped Lot in Cascade, Cascade, ID |
| Bankruptcy Trustee/Estate and St. Lukes - Medical Lien | Undeveloped Lot in Cascade, Cascade, ID |

It appears that the mortgage for the Rental Home has been assigned to Washington Mutual Bank, FA. This property is currently being foreclosed on.

(c) **Assumption Or Rejection Of Unexpired Leases Or Executory Contracts.** The debtor assumes or rejects the following unexpired leases and/or executory contracts in accordance with 11 USC §365.

| CREDITOR | DESCRIPTION OF LEASED PROPERTY | ASSUME OR REJECT |
|----------|--------------------------------|------------------|
| N/A | | |

(d) **Judicial Lien Avoidance.** The debtor hereby MOVES, pursuant to 11 USC §522(f)(1)(A), to avoid the judicial liens of the following creditors. Absent a timely written objection from the creditor by the time set by the court for the first meeting of creditors or within five (5) days thereafter, the order of confirmation will avoid its lien, and its claim will be treated under section 4(c)(2) of this plan. Debtor asserts the property is exempt under I.C. §55-1001, et seq.

| CREDITOR | DESCRIPTION OF JUDGMENT LIEN | COUNTY & INSTRUMENT NUMBER |
|----------|------------------------------|----------------------------|
| N/A | | |

(e) **Other Lien Avoidance.** The debtor hereby MOVES, pursuant to 11 USC §522(f)(1)(B), to avoid the nonpossessory nonpurchase money security interests of the following creditors. Absent a timely written objection from the creditor by the time set by the court for the first meeting of creditors or within five (5) days thereafter, the order of confirmation will avoid its lien, and its claim will be treated under section 4(c)(2) of this plan.

| CREDITOR | DESCRIPTION OF EXEMPT PROPERTY | EXEMPTION STATUTE |
|----------|--------------------------------|-------------------|
| N/A | | |

6. **VESTING OF PROPERTY OF THE ESTATE:** Subject only to the liens provided for in this plan and upon confirmation of this plan, all property of the estate:

(Check One) ☒ shall vest in the debtor; OR
☐ shall not vest in the debtor.

DATED: July 14, 2001


 Bill Roark - DEBTOR